

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8700 of 1997

with

SPECIAL CIVIL APPLICATIONS No 6740 & 6741 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

RAMESH SUKHDEV

Versus

ARVIND MILLS LTD.

Appearance:

1. Special Civil Application No. 8700 of 1997
Dr Mukul Sinha for the Petitioners
Mr V.B.Patel with Mr Deepak V. Patel for the Respondent.
2. Special Civil Application No. 6740 of 1997
MR VB Patel with Mr. Deepak V.Patel for the petitioner.
Dr.Mukul Sinha for the respondent.
3. Special Civil Application No. 6741 of 1997
MR VB Patel with Mr. Deepak V.Patel for the petitioner.
Dr.Mukul Sinha for the respondent.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 10/03/98

ORAL JUDGEMENT

Rule. Mr. Deepak V.Patel waives service of Rule on behalf of the respondent in Special Civil Application No. 8700 of 1997, and Dr.Mukul Sinha waives service of the Rule on behalf of the respondents in Special Civil Applications Nos. 6740 and 6741 of 1997. At the request of the learned Advocates, these petitions are taken up for final hearing to-day.

In these petitions Ramesh Sukhdev and Ali Hussain Sabhi Hussain, who are the petitioners in Special Civil Application No. 8700/97, will hereinafter referred to as "the workmen" and the respondent Arvind Mills Limited, which is the petitioner in Special Civil Applications Nos. 6740 and 6741 of 1997, will hereinafter referred to as "the Company". These petitions have been filed challenging the judgment and order dated 30-6-97 passed by the Industrial Court, Ahmedabad in Appeals (IC) Nos.36 and 37 of 1996. The workmen have challenged the said judgment and order to the extent the Industrial Court has rejected the claim of back wages and continuity of services to them whereas the Company has challenged the said judgment and order by which Company has been directed to reinstate the workmen on their original posts.

The facts, shortly stated, are that workmen were placed under suspension by the Mill company on 24-2-1979 on the ground that workman Ali Hussain assaulted one Rasiklal Somabhai Patel, who was working as Assistant in the Department of the Company, and workman Ramesh Sukhdev abetted the said assault. The Company, after holding departmental inquiry, terminated the services of both the workmen on 9-3-79. Both the workmen filed applications before the Labour Court under the BIR Act which came to be registered as T.Applications Nos.92/97 and 93/97 . It appears that on 29-6-88, the Labour Court decided the preliminary issue by holding that the inquiry initiated by the company was illegal. The said order was challenged before the Industrial Court and the Industrial Court also rejected the said application.

The Labour Court, at the end of the trial, by its judgment and award dated 12-7-96 allowed the applications of the workmen by directing the mill-company to reinstate

both the workmen on their original posts with continuity of service and with full back wages.

The Mill-company preferred two appeals being Appeals (IC) Nos.36 and 37 of 1996 against the said judgment and award before the Industrial Court and, as stated above, the Industrial Court vide its judgment and order dated 30th June, 1997, directed the mill-company to reinstate both the workmen on their original posts without continuity of service and without any back wages within thirty days from the date of receipt of the order. It is this judgment and order which has been challenged in these petitions, as stated above.

Dr. Mukul Sinha, learned counsel appearing for the workmen has challenged the order of the Industrial Court by contending that the Industrial Court has not at all considered and appreciated the evidence on record. In the submission of Dr. Sinha, the Industrial Court being a Court of Appeal is expected to reappreciate the evidence on record and having failed to do so, it has resulted into failure of justice.

Having gone through the reasoning of the Industrial Court, I find considerable substance in the submission of Dr. Sinha. The Industrial Court in its judgment has reproduced the observation of the Presiding Officer of the Labour Court which is to the effect that:

"....if the respondent workmen had assaulted Shri Rasiklal Somabhai Patel then in that case, Shri Rasiklal should have in the first place given a complaint to the Factory Manager or the Manager of the opponent Mills and that he should have also made a complaint in this regard to the police..."

After having reproduced the above observation, the Industrial Court has observed that, it is true that there are no written documents or written complaint made by Shri Rasiklal Somabhai Patel, but merely because there is no written complaint or there are no written documents regarding the complaint before any police station, the conclusion cannot be drawn that the incident has not taken place and if such a conclusion is drawn then that conclusion is not legal and proper and it is totally unwarranted considering the factual material on record of the case i.e. oral evidence of the parties. Surprisingly, the Industrial Court has not considered the oral evidence of the parties while setting aside the finding of the Labour Court. Even if there are no

written documents or written complaint made by Shri Rasiklal Somabhai Patel, the finding of the Industrial Court that merely because there is no written complaint or there are no written documents regarding the complaint before the police station, the conclusion cannot be drawn that the incident has not taken place is, in my view, a finding based on surmises. Apart from this, even reading the subsequent paragraphs also, the Industrial Court has decided the case on the said basis. The Industrial Court, even though has recorded a finding that it is true that none of these witnesses has seen the incident with his own eyes which they have admitted in their cross examination, that does not mean that the incident has not taken place as concluded by the learned trial Judge, the same appears to have been recorded without appreciating the material produced before it. In substance, the Industrial Court has set aside the order of the Labour Court by holding that the findings recorded by the Labour Court are based on erroneous conclusions but without renaarrating the evidence or re-appreciating the same and this, in my view, has resulted in the failure of justice. The Industrial Court is expected to renarrate the evidence of the witnesses and evaluate the same by re-appreciating the same. Since this is not done in the instant case, I am of the view that the matters are required to be remanded to the Industrial Court to re-examine the appeals afresh.

In the result, these petitions are partially allowed. The judgment and order dated 30th June, 1997 passed by the Industrial Court in Appeals (IC) Nos.36 and 37 of 1997 directing the Mill-company to reinstate the workmen without back wages and without continuity of service is set aside and the matters are remanded to the Industrial Court, Ahmedabad with a direction to decide both the appeals afresh in accordance with law. It is clarified that whatever observations made hereinabove are prima facie in nature and the same will not come in the way of the Industrial Court in deciding the appeals on merits in accordance with law. Rule is made absolute to the aforesaid extent in each of these petitions with no order as to costs.

Considering the fact that the dispute is very old, the Industrial Court is directed to hear and decide the appeals as expeditiously as possible and preferably within three months from the date of the receipt of the writ of this Court.

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